

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
July 18, 2005 Session

JUNE BETTY WILLIAMS v. SATURN CORPORATION

**Direct Appeal from the Chancery Court for Maury County
No. 99-116 Stella L. Hargrove, Chancellor**

**No. M2004-01215-WC-R3-CV - Mailed - October 12, 2005
Filed - November 15, 2005**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer asserts that the trial court erred in awarding \$12,360 in temporary total disability benefits for the period between April 5, 2000, and September 19, 2000. We conclude that the evidence presented more appropriately supported a finding that the employee was entitled to temporary partial benefits in the amount awarded by the chancellor and, in accordance with Tennessee Code Annotated § 50-6-225(e)(2), affirm the judgment of the trial court as so modified.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Trial Court
Affirmed as modified.**

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, J., and WILLIAM H. INMAN, SR. J., joined.

Marcia McShane Watson, Nashville, Tennessee, for appellant, Saturn Corporation.

Michael D. Dillon, Nashville, Tennessee, for appellee, June Betty Williams.

MEMORANDUM OPINION

I. FACTUAL BACKGROUND

The employee, June Williams, has a 12th grade education and was forty-four years old at the time of trial. She began working for General Motors in 1977 and has worked for the employer, Saturn Corporation, since 1991. Ms. Williams worked on the assembly line at Saturn where her duties included repetitive work with her arms above shoulder level.

As a result of her employment, Ms. Williams gradually developed problems in both shoulders. After years of treatment at the Saturn clinic, she was referred to an orthopedic surgeon, Dr. Jeffrey T. Adams. Ms. Williams underwent three surgeries on her shoulders. On February 23, 1999, she had surgery on her right shoulder. On June 22, 1999, and January 19, 2000, she underwent surgeries on her left shoulder.

Ms. Williams returned to work on February 1, 2000, after being released with restrictions by her doctor, Dr. Adams. These restrictions generally provided for no work at or above the shoulder level. As a result of the restrictions, she was not able to rotate through each task on her assigned assembly teams. On April 4, 2000, Saturn informed Ms. Williams that she could not continue to work at Saturn until a position was found that could accommodate her medical restrictions.

From April 5, 2000, until January 7, 2001, Ms. Williams was out of work. She applied for many jobs at Saturn during this period. Ms. Williams testified she was looking for a job because she could not afford to be out of work. She was not hired for several of the jobs for which she applied because the Saturn medical department told her she could not perform the tasks required by these jobs within her restrictions. She was not hired for other jobs due to seniority or for other non-medical reasons. The parties agree that September 19, 2000, was Ms. Williams' date of maximum medical improvement. On January 8, 2001, Ms. Williams returned to work at Saturn test-driving cars, a job within her medical restrictions.

Saturn has an employer-funded disability benefits plan that allows it to offset disability payments made under the plan against workers' compensation benefits. The parties stipulate that Ms. Williams received a total amount of \$25,778.04 in disability benefits under the plan and agree that a set-off in this amount is appropriate.

The parties agree that Ms. Williams was entitled to temporary total disability benefits for three periods of time: a) February 23, 1999, through April 5, 1999, for \$3,090.00; b) June 22, 1999, through August 19, 1999, for \$4,340.71; and c) January 19, 2000, through January 31, 2000, for \$956.43. The parties disagree, however, as to whether Ms. Williams was entitled to receive temporary total disability payments for the period from April 5, 2000, through September 19, 2000, the period of time after she was laid off at Saturn until her date of maximum medical improvement.

At the conclusion of proof, the trial court found that Ms. Williams was entitled to \$12,360.00 for the disputed period of time for a total of \$20,747.14 in temporary total disability payments. Therefore, as provided in Tennessee Code Annotated, section 50-6-114(b), Saturn was only allowed to set off \$5,030.90, the difference between \$25,778.04 in Saturn disability plan payments and \$20,747.14 in temporary total disability payments.

II. STANDARD OF REVIEW

The standard of review of issues of fact is *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Lollar v. Wal-Mart Stores, Inc., 767 S.W.2d 143, 149 (Tenn. 1989); Tenn. Code Ann. § 50-6-225(e)(2) (2005). Where credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Long v. Tri-Con Industries, Ltd., 996 S.W.2d 173, 178 (Tenn. 1999). Where issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions and the reviewing court may draw its own conclusions with regard to those issues. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991).

III. ANALYSIS

The employer maintains that the evidence preponderates against the trial court's finding that the employee is entitled to receive temporary total disability payments for the period from April 5, 2000, through September 19, 2000. Temporary total disability refers to the injured employee's condition while disabled from working because of her injury and until she recovers as far as the nature of her injury permits. Redmond v. McMinn County, 354 S.W.2d 435, 437 (Tenn. 1962). Benefits for temporary total disability are payable until the injured employee is able to return to work or, if she does not return to work, until she attains maximum recovery from her injury, at which time her entitlement to such benefits terminates. Prince v. Sentry Ins. Co., 908 S.W.2d 937, 939 (Tenn. 1995). The compensation rate for temporary total disability is 66 2/3% of the employee's average weekly wages, subject to the maximum and minimum fixed by law. Tenn. Code Ann. § 50-6-207(1) (2005).

Temporary partial disability refers to the time, if any, during which the injured employee is able to resume some gainful employment but has not reached maximum recovery. The compensation rate for temporary partial disability is 66 2/3% of the difference between the wage of the worker at the time of the injury and the wage she is able to earn in her partially disabled condition. Id. § 50-6-207(2).

It is well established that temporary total disability benefits are terminated by the ability of the employee to return to work. Brown Shoe Company v. Pipes, 581 S.W.2d 140, 141 (Tenn. 1979); Simpson v. Satterfield, 564 S.W.2d 953, 955 (Tenn. 1978). In the case before us, Ms. Williams was able to work during the period from April 5, 2000, through September 19, 2000, her date of maximum medical improvement. Her ability to work is demonstrated by her return to work with restrictions on February 1, 2000, and her repeated attempts to find work after her termination on April 4, 2000. Thus, she is precluded from receiving temporary total disability benefits during this period.

Even though Ms. Williams had the ability to resume some gainful employment during the period in question, we note she had not reached her maximum medical improvement. She made a good faith effort to find work at Saturn that she was able to perform. She was prevented from accepting some jobs because Saturn's medical staff believed they could not be performed within the restrictions imposed upon Ms. Williams by her treating physician and other jobs because of Saturn's employment policies. Thus, we feel she is entitled to receive temporary partial disability benefits during this period. The compensation rate for temporary partial disability was, at the time of Ms. Williams' injury, 66 2/3% of the difference between the wage of the worker at the time of the injury and the wage she is able to earn in her partially disabled condition.¹ Based upon the evidence before us, the wage that she was able to earn in her partially disabled condition was zero. Ms. Williams is, therefore, entitled to \$12,360, the same amount as the trial court's award of temporary total disability benefits. Ms. Williams is entitled to a credit for amounts awarded as temporary partial disability against the set-off to which Saturn is entitled pursuant to Tennessee Code Annotated section 50-6-114(b).²

We believe the trial court more appropriately should have labeled the award of \$12,360 as temporary partial benefits rather than temporary total disability benefits. Nevertheless, the employee is entitled to this same amount in benefits as awarded by the trial court.

IV. CONCLUSION

¹We are aware that in *Wilkins v. The Kellogg Company*, 48 S.W.3d 148 (Tenn. 2001) it was held the term "wage" used for computing temporary partial disability in Tennessee Code Annotated section 50-6-207(2) did not necessarily equate with the phrase "average weekly wage" used for computing other types of benefits. That holding was reversed by legislative action when the referenced code section was amended, effective July 1, 2004, to read:

(2) Temporary Partial Disability. In all cases of temporary partial disability, the compensation shall be sixty-six and two-thirds percent (662/3%) of the difference between *the average weekly wage* of the worker at the time of the injury and the wage such worker is able to earn in such worker's partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond four hundred (400) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit. (emphasis added)

In the case before us, the only evidence of Ms. Williams' earnings is the agreement between the parties that her rate of compensation was \$515.00 per week at the time of the injury, February 1999. That being the only evidence before us, we have used this number in calculating "temporary partial disability."

²Tennessee Code Annotated section 50-6-114(b) provides:

(b) However, any employer may set off from temporary total, temporary partial, and permanent partial and permanent total disability benefits any payment made to an employee under an employer funded disability plan for the same injury; provided, that the disability plan permits such an offset. Such an offset from a disability plan may not result in an employee receiving less than the employee would otherwise receive under the Workers' Compensation Law. In the event that a collective bargaining agreement is in effect, this provision shall be subject to the agreement of both parties.

The judgment of the trial court is affirmed, as modified, with costs taxed to the employer, Saturn Corporation.

DONALD P. HARRIS, SR. J.

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the employer, Saturn Corporation, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM